

106TH CONGRESS  
2D SESSION

# H. R. 4391

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IN THE SENATE OF THE UNITED STATES

JULY 12, 2000

Received

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## AN ACT

To amend title 4 of the United States Code to establish sourcing requirements for State and local taxation of mobile telecommunication services.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Mobile Telecommuni-  
3 cations Sourcing Act”.

4 **SEC. 2. AMENDMENTS TO TITLE 4 OF THE UNITED STATES**  
5 **CODE.**

6       (a) AMENDMENT RELATING TO THE STATES.—Chap-  
7 ter 4 of title 4 of the United States Code is amended by  
8 adding at the end the following:

9 **“§ 116. Rules for determining State and local govern-**  
10 **ment treatment of charges related to mo-**  
11 **bile telecommunications services**

12       “(a) APPLICATION OF THIS SECTION THROUGH SEC-  
13 TION 126.—This section through 126 of this title apply  
14 to any tax, charge, or fee levied by a taxing jurisdiction  
15 as a fixed charge for each customer or measured by gross  
16 amounts charged to customers for mobile telecommuni-  
17 cations services, regardless of whether such tax, charge,  
18 or fee is imposed on the vendor or customer of the service  
19 and regardless of the terminology used to describe the tax,  
20 charge, or fee.

21       “(b) GENERAL EXCEPTIONS.—This section through  
22 126 of this title do not apply to—

23               “(1) any tax, charge, or fee levied upon or  
24       measured by the net income, capital stock, net  
25       worth, or property value of the provider of mobile  
26       telecommunications service;

1           “(2) any tax, charge, or fee that is applied to  
2           an equitably apportioned amount that is not deter-  
3           mined on a transactional basis;

4           “(3) any tax, charge, or fee that represents  
5           compensation for a mobile telecommunications serv-  
6           ice provider’s use of public rights of way or other  
7           public property, provided that such tax, charge, or  
8           fee is not levied by the taxing jurisdiction as a fixed  
9           charge for each customer or measured by gross  
10          amounts charged to customers for mobile tele-  
11          communication services;

12          “(4) any generally applicable business and occu-  
13          pation tax that is imposed by a State, is applied to  
14          gross receipts or gross proceeds, is the legal liability  
15          of the home service provider, and that statutorily al-  
16          lows the home service provider to elect to use the  
17          sourcing method required in this section through  
18          126 of this title;

19          “(5) any fee related to obligations under section  
20          254 of the Communications Act of 1934; or

21          “(6) any tax, charge, or fee imposed by the  
22          Federal Communications Commission.

23          “(c) SPECIFIC EXCEPTIONS.—This section through  
24          126 of this title—

1 “(1) do not apply to the determination of the  
2 taxing situs of prepaid telephone calling services;

3 “(2) do not affect the taxability of either the  
4 initial sale of mobile telecommunications services or  
5 subsequent resale of such services, whether as sales  
6 of such services alone or as a part of a bundled  
7 product, if the Internet Tax Freedom Act would pre-  
8 clude a taxing jurisdiction from subjecting the  
9 charges of the sale of such services to a tax, charge,  
10 or fee, but this section provides no evidence of the  
11 intent of Congress with respect to the applicability  
12 of the Internet Tax Freedom Act to such charges;  
13 and

14 “(3) do not apply to the determination of the  
15 taxing situs of air-ground radiotelephone service as  
16 defined in section 22.99 of title 47 of the Code of  
17 Federal Regulations as in effect on June 1, 1999.

18 **“§ 117. Sourcing rules**

19 “(a) TREATMENT OF CHARGES FOR MOBILE TELE-  
20 COMMUNICATIONS SERVICES.—Notwithstanding the law  
21 of any State or political subdivision of any State, mobile  
22 telecommunications services provided in a taxing jurisdic-  
23 tion to a customer, the charges for which are billed by  
24 or for the customer’s home service provider, shall be

1 deemed to be provided by the customer's home service pro-  
2 vider.

3       “(b) JURISDICTION.—All charges for mobile tele-  
4 communications services that are deemed to be provided  
5 by the customer's home service provider under sections  
6 116 through 126 of this title are authorized to be sub-  
7 jected to tax, charge, or fee by the taxing jurisdictions  
8 whose territorial limits encompass the customer's place of  
9 primary use, regardless of where the mobile telecommuni-  
10 cation services originate, terminate, or pass through, and  
11 no other taxing jurisdiction may impose taxes, charges, or  
12 fees on charges for such mobile telecommunications serv-  
13 ices.

14 **“§ 118. Limitations**

15       “Sections 116 through 126 of this title do not—

16               “(1) provide authority to a taxing jurisdiction  
17 to impose a tax, charge, or fee that the laws of such  
18 jurisdiction do not authorize such jurisdiction to im-  
19 pose; or

20               “(2) modify, impair, supersede, or authorize the  
21 modification, impairment, or supersession of the law  
22 of any taxing jurisdiction pertaining to taxation ex-  
23 cept as expressly provided in sections 116 through  
24 126 of this title.

1 **“§ 119. Electronic databases for nationwide standard**  
2 **numeric jurisdictional codes**

3 “(a) ELECTRONIC DATABASE.—

4 “(1) PROVISION OF DATABASE.—A State may  
5 provide an electronic database to a home service pro-  
6 vider or, if a State does not provide such an elec-  
7 tronic database to home service providers, then the  
8 designated database provider may provide an elec-  
9 tronic database to a home service provider.

10 “(2) FORMAT.—(A) Such electronic database,  
11 whether provided by the State or the designated  
12 database provider, shall be provided in a format ap-  
13 proved by the American National Standards Insti-  
14 tute’s Accredited Standards Committee X12, that,  
15 allowing for de minimis deviations, designates for  
16 each street address in the State, including to the ex-  
17 tent practicable, any multiple postal street addresses  
18 applicable to one street location, the appropriate tax-  
19 ing jurisdictions, and the appropriate code for each  
20 taxing jurisdiction, for each level of taxing jurisdic-  
21 tion, identified by one nationwide standard numeric  
22 code.

23 “(B) Such electronic database shall also provide  
24 the appropriate code for each street address with re-  
25 spect to political subdivisions which are not taxing

1 jurisdictions when reasonably needed to determine  
2 the proper taxing jurisdiction.

3 “(C) The nationwide standard numeric codes  
4 shall contain the same number of numeric digits  
5 with each digit or combination of digits referring to  
6 the same level of taxing jurisdiction throughout the  
7 United States using a format similar to FIPS 55–  
8 3 or other appropriate standard approved by the  
9 Federation of Tax Administrators and the  
10 Multistate Tax Commission, or their successors.  
11 Each address shall be provided in standard postal  
12 format.

13 “(b) NOTICE; UPDATES.—A State or designated  
14 database provider that provides or maintains an electronic  
15 database described in subsection (a) shall provide notice  
16 of the availability of the then current electronic database,  
17 and any subsequent revisions thereof, by publication in the  
18 manner normally employed for the publication of informa-  
19 tional tax, charge, or fee notices to taxpayers in such  
20 State.

21 “(c) USER HELD HARMLESS.—A home service pro-  
22 vider using the data contained in an electronic database  
23 described in subsection (a) shall be held harmless from  
24 any tax, charge, or fee liability that otherwise would be  
25 due solely as a result of any error or omission in such

1 database provided by a State or designated database pro-  
2 vider. The home service provider shall reflect changes  
3 made to such database during a calendar quarter not later  
4 than 30 days after the end of such calendar quarter for  
5 each State that issues notice of the availability of an elec-  
6 tronic database reflecting such changes under subsection  
7 (b).

8 **“§ 120. Procedure if no electronic database provided**

9       “(a) SAFE HARBOR.—If neither a State nor des-  
10 ignated database provider provides an electronic database  
11 under section 119, a home service provider shall be held  
12 harmless from any tax, charge, or fee liability in such  
13 State that otherwise would be due solely as a result of  
14 an assignment of a street address to an incorrect taxing  
15 jurisdiction if, subject to section 121, the home service  
16 provider employs an enhanced zip code to assign each  
17 street address to a specific taxing jurisdiction for each  
18 level of taxing jurisdiction and exercises due diligence at  
19 each level of taxing jurisdiction to ensure that each such  
20 street address is assigned to the correct taxing jurisdic-  
21 tion. If an enhanced zip code overlaps boundaries of taxing  
22 jurisdictions of the same level, the home service provider  
23 must designate one specific jurisdiction within such en-  
24 hanced zip code for use in taxing the activity for such en-  
25 hanced zip code for each level of taxing jurisdiction. Any



1 enhanced zip code assignment changed in accordance with  
2 section 121 is deemed to be in compliance with this sec-  
3 tion. For purposes of this section, there is a rebuttable  
4 presumption that a home service provider has exercised  
5 due diligence if such home service provider demonstrates  
6 that it has—

7           “(1) expended reasonable resources to imple-  
8           ment and maintain an appropriately detailed elec-  
9           tronic database of street address assignments to tax-  
10          ing jurisdictions;

11          “(2) implemented and maintained reasonable  
12          internal controls to promptly correct misassignments  
13          of street addresses to taxing jurisdictions; and

14          “(3) used all reasonably obtainable and usable  
15          data pertaining to municipal annexations,  
16          incorporations, reorganizations and any other  
17          changes in jurisdictional boundaries that materially  
18          affect the accuracy of such database.

19          “(b) TERMINATION OF SAFE HARBOR.—Subsection  
20 (a) applies to a home service provider that is in compliance  
21 with the requirements of subsection (a), with respect to  
22 a State for which an electronic database is not provided  
23 under section 119 until the later of—

24               “(1) 18 months after the nationwide standard  
25               numeric code described in section 119(a) has been

1 approved by the Federation of Tax Administrators  
2 and the Multistate Tax Commission; or

3 “(2) 6 months after such State or a designated  
4 database provider in such State provides such data-  
5 base as prescribed in section 119(a).

6 **“§ 121. Correction of erroneous data for place of pri-**  
7 **mary use**

8 “(a) IN GENERAL.—A taxing jurisdiction, or a State  
9 on behalf of any taxing jurisdiction or taxing jurisdictions  
10 within such State, may—

11 “(1) determine that the address used for pur-  
12 poses of determining the taxing jurisdictions to  
13 which taxes, charges, or fees for mobile tele-  
14 communications services are remitted does not meet  
15 the definition of place of primary use in section  
16 124(8) and give binding notice to the home service  
17 provider to change the place of primary use on a  
18 prospective basis from the date of notice of deter-  
19 mination if—

20 “(A) if the taxing jurisdiction making such  
21 determination is not a State, such taxing juris-  
22 diction obtains the consent of all affected taxing  
23 jurisdictions within the State before giving such  
24 notice of determination; and

1           “(B) before the taxing jurisdiction gives  
 2           such notice of determination, the customer is  
 3           given an opportunity to demonstrate in accord-  
 4           ance with applicable State or local tax, charge,  
 5           or fee administrative procedures that the ad-  
 6           dress is the customer’s place of primary use;

7           “(2) determine that the assignment of a taxing  
 8           jurisdiction by a home service provider under section  
 9           120 does not reflect the correct taxing jurisdiction  
 10          and give binding notice to the home service provider  
 11          to change the assignment on a prospective basis  
 12          from the date of notice of determination if—

13           “(A) if the taxing jurisdiction making such  
 14           determination is not a State, such taxing juris-  
 15           diction obtains the consent of all affected taxing  
 16           jurisdictions within the State before giving such  
 17           notice of determination; and

18           “(B) the home service provider is given an  
 19           opportunity to demonstrate in accordance with  
 20           applicable State or local tax, charge, or fee ad-  
 21           ministrative procedures that the assignment re-  
 22           flects the correct taxing jurisdiction.

23   **“§ 122. Determination of place of primary use**

24           “(a) PLACE OF PRIMARY USE.—A home service pro-  
 25          vider shall be responsible for obtaining and maintaining

1 the customer's place of primary use (as defined in section  
2 124). Subject to section 121, and if the home service pro-  
3 vider's reliance on information provided by its customer  
4 is in good faith, a taxing jurisdiction shall—

5           “(1) allow a home service provider to rely on  
6           the applicable residential or business street address  
7           supplied by the home service provider's customer;  
8           and

9           “(2) not hold a home service provider liable for  
10          any additional taxes, charges, or fees based on a dif-  
11          ferent determination of the place of primary use for  
12          taxes, charges or fees that are customarily passed on  
13          to the customer as a separate itemized charge.

14          “(b) ADDRESS UNDER EXISTING AGREEMENTS.—  
15 Except as provided in section 121, a taxing jurisdiction  
16 shall allow a home service provider to treat the address  
17 used by the home service provider for tax purposes for  
18 any customer under a service contract or agreement in ef-  
19 fect 2 years after the date of enactment of the Mobile  
20 Telecommunications Sourcing Act as that customer's  
21 place of primary use for the remaining term of such serv-  
22 ice contract or agreement, excluding any extension or re-  
23 newal of such service contract or agreement, for purposes  
24 of determining the taxing jurisdictions to which taxes,

1 charges, or fees on charges for mobile telecommunications  
2 services are remitted.

3 **“§ 123. Scope; special rules**

4       “(a) ACT DOES NOT SUPERSEDE CUSTOMER’S LI-  
5 ABILITY TO TAXING JURISDICTION.—Nothing in sections  
6 116 through 126 modifies, impairs, supersedes, or author-  
7 izes the modification, impairment, or supersession of, any  
8 law allowing a taxing jurisdiction to collect a tax, charge,  
9 or fee from a customer that has failed to provide its place  
10 of primary use.

11       “(b) ADDITIONAL TAXABLE CHARGES.—If a taxing  
12 jurisdiction does not otherwise subject charges for mobile  
13 telecommunications services to taxation and if these  
14 charges are aggregated with and not separately stated  
15 from charges that are subject to taxation, then the charges  
16 for nontaxable mobile telecommunications services may be  
17 subject to taxation unless the home service provider can  
18 reasonably identify charges not subject to such tax,  
19 charge, or fee from its books and records that are kept  
20 in the regular course of business.

21       “(c) NONTAXABLE CHARGES.—If a taxing jurisdic-  
22 tion does not subject charges for mobile telecommuni-  
23 cations services to taxation, a customer may not rely upon  
24 the nontaxability of charges for mobile telecommuni-  
25 cations services unless the customer’s home service pro-

1 vider separately states the charges for nontaxable mobile  
2 telecommunications services from taxable charges or the  
3 home service provider elects, after receiving a written re-  
4 quest from the customer in the form required by the pro-  
5 vider, to provide verifiable data based upon the home serv-  
6 ice provider's books and records that are kept in the reg-  
7 ular course of business that reasonably identifies the non-  
8 taxable charges.

9 **“§ 124. Definitions**

10 “In sections 116 through 126 of this title:

11 “(1) CHARGES FOR MOBILE TELECOMMUNI-  
12 CATIONS SERVICES.—The term ‘charges for mobile  
13 telecommunications services’ means any charge for,  
14 or associated with, the provision of commercial mo-  
15 bile radio service, as defined in section 20.3 of title  
16 47 of the Code of Federal Regulations as in effect  
17 on June 1, 1999, or any charge for, or associated  
18 with, a service provided as an adjunct to a commer-  
19 cial mobile radio service, that is billed to the cus-  
20 tomer by or for the customer's home service provider  
21 regardless of whether individual transmissions origi-  
22 nate or terminate within the licensed service area of  
23 the home service provider.

24 “(2) CUSTOMER.—

1                   “(A) IN GENERAL.—The term ‘customer’  
2 means—

3                   “(i) the person or entity that con-  
4 tracts with the home service provider for  
5 mobile telecommunications services; or

6                   “(ii) if the end user of mobile tele-  
7 communications services is not the con-  
8 tracting party, the end user of the mobile  
9 telecommunications service, but this clause  
10 applies only for the purpose of determining  
11 the place of primary use.

12                  “(B) The term ‘customer’ does not  
13 include—

14                  “(i) a reseller of mobile telecommuni-  
15 cations service; or

16                  “(ii) a serving carrier under an ar-  
17 rangement to serve the customer outside  
18 the home service provider’s licensed service  
19 area.

20                  “(3) DESIGNATED DATABASE PROVIDER.—The  
21 term ‘designated database provider’ means a cor-  
22 poration, association, or other entity representing all  
23 the political subdivisions of a State that is—

24                  “(A) responsible for providing an electronic  
25 database prescribed in section 119(a) if the

1 State has not provided such electronic database;  
2 and

3 “(B) approved by municipal and county as-  
4 sociations or leagues of the State whose respon-  
5 sibility it would otherwise be to provide such  
6 database prescribed by sections 116 through  
7 126 of this title.

8 “(4) ENHANCED ZIP CODE.—The term ‘en-  
9 hanced zip code’ means a United States postal zip  
10 code of 9 or more digits.

11 “(5) HOME SERVICE PROVIDER.—The term  
12 ‘home service provider’ means the facilities-based  
13 carrier or reseller with which the customer contracts  
14 for the provision of mobile telecommunications serv-  
15 ices.

16 “(6) LICENSED SERVICE AREA.—The term ‘li-  
17 censed service area’ means the geographic area in  
18 which the home service provider is authorized by law  
19 or contract to provide commercial mobile radio serv-  
20 ice to the customer.

21 “(7) MOBILE TELECOMMUNICATIONS SERV-  
22 ICE.—The term ‘mobile telecommunications service’  
23 means commercial mobile radio service, as defined in  
24 section 20.3 of title 47 of the Code of Federal Regu-  
25 lations as in effect on June 1, 1999.



1           “(8) PLACE OF PRIMARY USE.—The term ‘place  
2           of primary use’ means the street address representa-  
3           tive of where the customer’s use of the mobile tele-  
4           communications service primarily occurs, which must  
5           be—

6                   “(A) the residential street address or the  
7                   primary business street address of the cus-  
8                   tomer; and

9                   “(B) within the licensed service area of the  
10                  home service provider.

11           “(9) PREPAID TELEPHONE CALLING SERV-  
12           ICES.—The term ‘prepaid telephone calling service’  
13           means the right to purchase exclusively tele-  
14           communications services that must be paid for in  
15           advance, that enables the origination of calls using  
16           an access number, authorization code, or both,  
17           whether manually or electronically dialed, if the re-  
18           maining amount of units of service that have been  
19           prepaid is known by the provider of the prepaid  
20           service on a continuous basis.

21           “(10) RESELLER.—The term ‘reseller’—

22                   “(A) means a provider who purchases tele-  
23                   communications services from another tele-  
24                   communications service provider and then re-  
25                   sells, uses as a component part of, or integrates

1 the purchased services into a mobile tele-  
2 communications service; and

3 “(B) does not include a serving carrier  
4 with which a home service provider arranges for  
5 the services to its customers outside the home  
6 service provider’s licensed service area.

7 “(11) SERVING CARRIER.—The term ‘serving  
8 carrier’ means a facilities-based carrier providing  
9 mobile telecommunications service to a customer  
10 outside a home service provider’s or reseller’s li-  
11 censed service area.

12 “(12) TAXING JURISDICTION.—The term ‘tax-  
13 ing jurisdiction’ means any of the several States, the  
14 District of Columbia, or any territory or possession  
15 of the United States, any municipality, city, county,  
16 township, parish, transportation district, or assess-  
17 ment jurisdiction, or any other political subdivision  
18 within the territorial limits of the United States with  
19 the authority to impose a tax, charge, or fee.

20 **“§ 125. Nonseverability**

21 “If a court of competent jurisdiction enters a final  
22 judgment on the merits that—

23 “(1) is based on Federal law;

24 “(2) is no longer subject to appeal; and

1           “(3) substantially limits or impairs the essential  
 2           elements of sections 116 through 126 of this title,  
 3 then sections 116 through 126 of this title are invalid and  
 4 have no legal effect as of the date of entry of such judg-  
 5 ment.

6   **“§ 126. No inference**

7           “(a) INTERNET TAX FREEDOM ACT.—Nothing in  
 8 sections 116 through this section of this title shall be con-  
 9 strued as bearing on Congressional intent in enacting the  
 10 Internet Tax Freedom Act or to modify or supersede the  
 11 operation of such Act.

12          “(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing  
 13 in sections 116 through this section of this title shall limit  
 14 or otherwise affect the implementation of the Tele-  
 15 communications Act of 1996 or the amendments made by  
 16 such Act.”.

17          (b) TECHNICAL AMENDMENT.—The table of sections  
 18 of chapter 4 of title 4, United States Code, is amended  
 19 by adding the following after the item relating to section  
 20 115:

“116. Rules for determining State and local government treatment of charges  
 related to mobile telecommunications services.

“117. Sourcing rules.

“118. Limitations.

“119. Electronic databases for nationwide standard numeric jurisdictional  
 codes.

“120. Procedure if no electronic database provided.

“121. Correction of erroneous data for place of primary use.

“122. Determination of place of primary use.

“123. Scope; special rules.

“124. Definitions.

“125. Nonseverability.

“126. No inference.”.

1 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-  
 3 section (b), this Act and the amendment made by this Act  
 4 shall take effect on the date of the enactment of this Act.

5 (b) APPLICATION OF ACT.—The amendment made by  
 6 this Act shall apply only to customer bills issued after the  
 7 first day of the first month beginning more than 2 years  
 8 after the date of the enactment of this Act.

Passed the House of Representatives July 11, 2000.

Attest:

JEFF TRANDAHL,

*Clerk.*